

**IN THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 05-CV-00329-TCK-SAJ
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**STATE OF OKLAHOMA'S REPLY IN FURTHER SUPPORT OF ITS
MOTION TO SETTLE THE TERMS OF THE CONFIDENTIALITY ORDER**

COMES NOW the Plaintiff, the State of Oklahoma, ex rel. W.A. Drew Edmondson, in his capacity as Attorney General of the State of Oklahoma, and Oklahoma Secretary of the Environment, C. Miles Tolbert, in his capacity as the Trustee for Natural Resources for the State of Oklahoma under CERCLA, ("the State"), and submits the following reply in further support of its motion to settle the terms of the confidentiality order [DKT #917].

Defendants object to the State's inclusion of section 5(c)(2) in the confidentiality order¹ -- which would allow CONFIDENTIAL ATTORNEYS' EYES ONLY information to be shared with a State employee consistent with the terms of the confidentiality order -- on the grounds that (1) it will result in "wide-spread and indiscriminate dissemination" of such information, (2) State employees will disclose such information to Defendants' competitors, and (3) section 5(c)(5) of the confidentiality order addresses the State's concerns. *See* Defendants' Response, pp. 3-6 [DKT #933].

As to the first of Defendants' assertions, the confidentiality order plainly provides that before the counsel for the State may share such information with a State employee, he or she

¹ References to sections of the confidentiality order are to those sections found in the State's version of the confidentiality order. *See* Exhibit A to DKT #917.

must first certify that "the assistance of [an employee of the party plaintiff -- i.e., the State] is reasonably necessary to the conduct of this litigation and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL ATTORNEYS' EYES ONLY." *See* Exhibit A to DKT #917, p. 13 (Attachment B). Given the certification requirement, allegations of the potential for "wide-spread and indiscriminate dissemination" by the State's counsel are nothing but overwrought hyperbole.

As to the second of Defendants' assertions, the confidentiality order plainly provides that the disclosed information "shall not be used or disclosed . . . for any purposes other than preparing for and conducting the litigation in which the documents were disclosed." *See* Exhibit A to DKT #917, p. 3 (Section 5(a)). Further, persons to whom the information is disclosed must sign an "Acknowledgment of Understanding and Agreement to be Bound" wherein they agree "not to disclose any such information with documents subject to CONFIDENTIAL ATTORNEYS' EYES ONLY or CONFIDENTIAL treatment to any other person, firm or concern." *See* Exhibit A to DKT #917, p. 11 (Attachment A). To suggest that State employees to whom such information is disclosed would violate the Court's order and improperly disclose such information is pure unsubstantiated speculation on the part of Defendants and insulting to the dignity and honesty of the hardworking people who serve the State of Oklahoma.

As to the third of Defendants' assertions, section 5(c)(5) of the confidentiality order does not adequately address the State's concerns that it be able to consult, in confidence, with certain State employees on matters pertaining to this lawsuit. Should the State be required to come to Court and disclose to Defendants what specific information it wishes to share with a State employee and with which specific State employee it wishes to share it, the State will be unfairly prejudiced in its trial preparation. Indeed, such a result is entirely inconsistent with Rule 26(b).

The reason initially proffered by Defendants for CONFIDENTIAL ATTORNEYS' EYES ONLY protection was to protect such information from Defendants' competitors. *See* Defendants' Joint Response in Opposition to Plaintiff's Motion for Entry of Proposed Confidentiality Order [DKT #641], p. 2. The State is simply not a competitor of Defendants. Thus, there exists no valid basis for limiting counsel for the State, after certifying that "the assistance of [an employee of the party plaintiff -- i.e., the State] is reasonably necessary to the conduct of this litigation and that this assistance requires the disclosure to this individual of information which has been designated as CONFIDENTIAL ATTORNEYS' EYES ONLY," from disclosing such CONFIDENTIAL ATTORNEYS' EYES ONLY information to such a State employee consistent with the terms of the confidentiality order.

CONCLUSION

WHEREFORE, premises considered, this Court should settle the terms of the confidentiality order such that it includes section 5(c)(2), and enter same.

Respectfully Submitted,

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